

MORE THAN HALF OF ALL ICE DETAINEES AT WYATT RELEASED ON BAIL DUE TO ACLU CLASS-ACTION LAWSUIT

A series of marathon bail hearings before U.S. District Judge Mary McElroy has concluded in response to an emergency class-action lawsuit filed by ACLU attorneys seeking relief for immigration detainees at the Wyatt Detention Center due to the spread of COVID-19 there. The result: the suit has led to the conditional release of more ICE detainees (25) than are currently being held at the facility (24). Before the suit was filed, the ACLU had separately won a lawsuit that secured the release of three other medically vulnerable ICE detainees from Wyatt.



The suit was filed at a time when the count of detainees at the facility infected with COVID-19 more than doubled in three days.

The class-action petition, supported by expert testimony, argued that all of the ICE detainees at Wyatt were at unreasonable risk of a serious, and potentially deadly, COVID-19 infection due to conditions at the facility, and therefore should be released or placed in “community-based alternatives to detention such as conditional release, with appropriate precautionary public health measures.” The petition argued that the detainees’ continued detention under conditions there violated their due process rights. The suit was filed at a time when the count of detainees at the facility infected with COVID-19 more than doubled in three days.

In an order issued in June, Judge McElroy agreed that “conditions at Wyatt, combined with the fact that COVID-19 is present in the institution, constitute emergency circumstances for every detainee housed there.” She criticized “the fact that several months into this pandemic and with widespread infection in the detention facility and surrounding community, the government has not undertaken any real effort to ascertain the underlying medical conditions of the detainees in this case.”

As a result of the bail hearings, the Judge ordered 16 detainees conditionally released, and ICE voluntarily released 9 more. The lawsuit has been handled by attorneys for the National ACLU, ACLU of Rhode Island cooperating attorneys Deborah Gonzalez and Jared Goldstein, and lawyers from the firm Morgan Lewis. The attorneys will continue to monitor any new ICE detainee intakes to the facility.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

Pride Month 2020 has come to a close. Not surprisingly, it looked dramatically different this year compared to years past. Protests over racist police brutality took the place of parades, which were put on hold because of the pandemic.

Fittingly, the LGBTQ community joined in the demonstrations, and I was reminded of Pride's early roots in standing up to discrimination and abuse – sometimes at the hands of police. In fact, a recent protest retraced the steps of the first RI Pride march in 1976 – which was denied a permit until the ACLU of RI stepped in!

So much of the fight for justice and equality is interrelated. In a trio of rare pro-equality rulings in June, the Supreme Court upheld the rights of LGBTQ employees, the right to abortion, and the rights of young immigrants. At least for now. . .

Because despite these historic rulings, the sobering reality is that many of the beneficiaries of those decisions still face discrimination every single day.

We cannot stop, and we will not stop, fighting for equality and justice for all. Thank you for your partnership in this fight.

-- Steven Brown

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VOTING RIGHTS

ACLU ASSISTS CANDIDATES OVER BALLOT SIGNATURE REQUIREMENTS DURING COVID-19

In response to an ACLU lawsuit, a federal judge agreed that the state must provide candidates an alternative method for gathering and returning ballot qualification signatures that avoids physical contact. The suit noted that requiring in-person solicitation and receipt of signatures needlessly exposes candidates and their supporters to COVID-19 infection. Although the alternative signature-collection method ultimately adopted by the state in response to the court order was less than ideal, the ruling set an important precedent.

The ACLU separately resolved complaints from candidates about local Boards of Canvassers closing early on days when candidacy papers and ballot signatures could be dropped off. The ACLU brought those complaints to the state Board of Elections' attention, which then took action to ensure that the local boards met their obligations to remain open.

VOTING RIGHTS ORGANIZATIONS URGE IMMEDIATE ACTION TO SAFEGUARD VOTERS' HEALTH IN THE FALL; LITIGATION AN OPTION

With only a short time until RI's September 8 primary, the ACLU and 15 other organizations urged state officials to take "immediate executive actions" to prepare for that election in the midst of the COVID-19 epidemic:

- A letter to Gov. Raimondo called on her to waive, as she did for the June primary, the statutory requirement of two witnesses or a notary signature on mail ballots, and to extend the deadline for the tabulation of mail ballots.
- A letter to the RI Secretary of State urged that mail ballot applications be sent to all registered voters at least 45 days prior to the primary.
- And a third letter to the RI Board of Elections asked that the Board take over from local boards of canvassers the process of qualifying mail ballots for the fall elections. The groups said the lack of centralization "proved to be a bottleneck" during the June 2nd election.

If the issues are not adequately addressed by the agencies, the ACLU is prepared to take legal action to protect voters' rights for the upcoming elections.

STUDENTS' RIGHTS



ACLU SUES PAWTUCKET SCHOOL OFFICIALS OVER UNLAWFUL ARREST OF 13-YEAR-OLD HONORS STUDENT

As conflict over race-based discriminatory police practices permeates the country, ACLU of RI cooperating attorneys Shannah Kurland and Lynette Labinger filed suit in federal court over a Pawtucket school resource officer's (SRO) unlawful handcuffing and arrest of Tre'sur Johnson, a 13-year-old Black honors student at Goff Middle School.

The case dates back to June 2019, when Tre'sur and another student got into a scuffle in the schoolyard before the day started. It was quickly broken up by other students, and neither student was hurt. However, an hour later, SRO Darren Rose, relying solely on video footage of the incident, arrested Tre'sur for "disorderly conduct." Tre'sur, who was an honor roll student with no prior disciplinary infractions, was handcuffed, taken to the police station, and kept in a cell for close to an hour before being released to her mother.

The suit argues that Rose, with the knowledge and consent of the school principal Lisa Ramzi, arrested Tre'sur "not for any reason having to do with safety but because he wanted 'to make an example' of this child." Among other relief, the suit seeks punitive damages against Rose and Ramzi for exercising a "gross abuse" of their powers, and a court order confirming the unlawful nature of their conduct.

SCHOOL RESOURCE OFFICERS, DISCIPLINE & EQUALITY

The ACLU has repeatedly raised concerns about how school resource officers (SROs) escalate minor disciplinary incidents into criminal matters, unnecessarily introducing children to the criminal justice system and scarring them in the process. We have also issued a series of reports documenting that students of color, along with students with disabilities, are disproportionately disciplined in virtually every RI school district. That is why the ACLU is lobbying at the state and local level for the removal of SROs, and urging schools to invest in mental health professionals and counselors instead.



ACLU SUES NARRAGANSETT OVER UNLAWFUL ASSAULT AND ARREST OF SPECIAL EDUCATION STUDENT

The ACLU has also filed suit in federal court on behalf of a former Narragansett High School student with special education needs who was thrown to the ground and arrested by an SRO over a rude hand gesture the student gave the officer.

A videotaped record of the incident shows SRO Kyle Rooney slamming to the floor and restraining 11th-grader Michael Blanchette for a few minutes before removing him from the school in handcuffs. Rooney's arrest report falsely claimed that he took this action because "Michael aggressively took a step towards me," an allegation belied by the video. Rooney charged Michael with disorderly conduct and resisting arrest, but both charges were later dismissed. Among other claims, the suit, filed by ACLU cooperating attorney Amato DeLuca, argues that Rooney violated Michael's Fourth Amendment right to be free from unreasonable searches and seizures, retaliated against him in violation of the First Amendment, and filed unfounded criminal charges against him.

TITLE IX GUARANTEES

- Freedom from gender-based violence and harassment
- Gender equality in dress codes, and freedom from sex stereotyping
- The rights of pregnant and parenting students
- Equality in athletic opportunities

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GROUPS GO TO COURT TO CHALLENGE BROWN UNIVERSITY'S ABANDONMENT OF GENDER EQUITY IN ATHLETICS

More than twenty years after a precedent-setting court victory finding that Brown University violated federal Title IX law by engaging in gender-based discrimination in its athletics programs, the ACLU of Rhode Island and Public Justice have returned to court, alleging the school is now breaking that agreement.

A motion filed in federal court claims that the University violated the terms of a 1998 agreement in the original case when it recently eliminated five women's varsity athletic teams. The program cuts will remove opportunities for twice as many women as men.

The university has claimed it will comply with the original agreement, in part, by adding co-ed and women's varsity sailing teams to next year's lineup. But the legal motion notes that Brown cannot achieve compliance based on teams that don't exist, and for which participation rates are not known.

The university has proposed eliminating women's varsity fencing, golf, squash, skiing and equestrian teams, while cutting three men's teams, resulting in a disproportionate impact on women's representation in athletics that runs afoul of the maximum gender disparity allowed under the 1998 consent agreement. The ACLU and Public Justice are seeking expedited action by the court.

WHAT HAPPENED TO THE ANNUAL LEGISLATIVE ISSUE?

You may recall from years past that this issue of the newsletter usually focuses on the legislative session. But as a result of the pandemic, the session has been mostly on hold since mid-March. In June, the legislature returned to hold a number of select committee hearings and pass the supplemental budget. It is holding a few more meetings in July but does not expect to complete business until August, when they will reconvene to pass the FY2021 budget. We will have a wrap-up of the truncated 2020 session in our next newsletter.

STUDENTS NEED NOT APPLY: ACLU RESPONDS TO PROPOSED AMENDMENT TO NARRAGANSETT ZONING ORDINANCE



The ACLU has sent a letter to the Narragansett Planning Board expressing concerns over a proposed amendment to the town's zoning ordinance that would bar more than three unrelated students from living together.

The letter noted that the proposal would not solve problems involving student misconduct, and that its timing – in the middle of a pandemic – will only exacerbate town-university divisions. The

ordinance is being considered at the same time that the University of Rhode Island plans to significantly reduce the number of students who can live on campus in order to promote proper social distancing when classes resume in the fall. A public Zoom meeting by the Planning Board on the proposal was cancelled when hundreds of people found themselves locked out of the meeting.

DUE PROCESS IN THE RECEIPT OF STATE BENEFITS

ACLU SUES OVER FROZEN UNEMPLOYMENT INSURANCE PAYMENTS

The ACLU filed a class-action lawsuit challenging the RI Department of Labor & Training (DLT) for freezing weekly unemployment benefits payments for thousands of Rhode Islanders without any notice or explanation. In response to the suit, the DLT has taken interim steps to rectify the situation, including notifying all recipients by email and postal mail if their benefits were frozen, and doubling the number of staff dedicated to communicating with those whose benefits were suspended.



The lead plaintiff in the case is Steven Hanson, a self-employed real estate appraiser with serious medical conditions, whose physician advised him to stop working because of the dangers posed by COVID-19. Hanson applied for unemployment, and received his first payment in April, but weeks later had not received another one. Seeking an explanation, he called DLT numerous times – and once waited about four hours on hold – without ever connecting to someone. The lawsuit, filed by ACLU cooperating attorney Ellen Saideman, describes the bureaucratic nightmare he and a second plaintiff encountered when they tried to find out why their payments had not been deposited. The suit argues that the state's failure to provide any notice or explanation violates plaintiffs' rights to due process.

The ACLU, which received hundreds of complaints from similarly situated residents after the suit was filed, is pressing in court for further steps by the DLT to address the backlog in benefits caused by its unilateral actions. The DLT's decision to freeze thousands of benefits came as the result of a broad investigation of unemployment insurance fraud in a number of states, including Rhode Island.



SETTLEMENT REACHED IN 3RD UHIP-RELATED LAWSUIT

The ACLU has settled its third class-action lawsuit against the RI Department of Human Services (DHS) related to the state's UHIP computer system. The suit, filed by ACLU attorneys Ellen Saideman and Lynette Labinger, challenged the inadequate notices sent to some food stamp recipients

demanding that they reimburse the state for purported overpayments received years earlier.

The suit was brought on behalf of Woonsocket resident Carmen Correa, who receives SNAP benefits for herself and her thirteen-year-old niece. Last fall, she received a notice from DHS demanding she repay \$1,925 in benefits that the agency claimed were overpaid her four years earlier.

Under the settlement, the state must provide recipients with specific reasons behind its claim that an overpayment was made and document how the amount of the alleged overpayment was calculated. The state is also barred from issuing demand letters or processing related SNAP benefit reductions until more detailed notices go out, expected to be sometime in September.

DHS's efforts to recoup alleged overpayments were halted a few years ago as a result of the problems of inaccuracy and untimeliness with benefits that occurred when UHIP went online. The UHIP program has been the subject of two other successful ACLU lawsuits.

NEWS BRIEFS: POLICE PROTESTS

ACLU Calls on PVD Police to Drop Felony Charges Against Alleged Columbus Statue Vandals

In a recent letter to Providence police chief Hugh Clements, Jr., the ACLU sharply criticized the Providence police department for filing felony charges against three Rhode Islanders who allegedly threw white paint at a boarded-up statue of Christopher Columbus. Rather than arresting the suspects for a misdemeanor vandalism offense, all three were charged with two felony offenses relating to “desecration of a grave” that carry a potential maximum sentence of six years in prison.

The ACLU noted that “as the city, state and country grapple with issues of police accountability, the abuse of the broad discretion that police often have in deciding what charges to lodge against suspects deserves very thorough scrutiny as well.” The ACLU called on the department to drop the charges and conduct a thorough review of the department’s charging practices.



ACLU Responds to Recent Curfews

Providence, Cranston and Warwick were among the municipalities that imposed curfews in response to recent protests against racial injustice. The ACLU objected, stating that the curfews were an overly broad response that could promote the types of discriminatory police actions that had spurred the protests. Notably, most of the curfews were in effect for only one night, following an evening of looting in downtown Providence. Providence was an exception, but one day after the ACLU threatened legal action against the continuing curfew order – which had been amended to allow local

restaurants and other licensees to stay open after 9pm – PVD rescinded the order.

NEWS BRIEFS: COVID-19

Following Objections, Governor Repeals Controversial Open Records Executive Order

After the ACLU and six other open government and media organizations publicly called on Governor Raimondo to rescind a damaging executive order (EO) related to government transparency that had been renewed multiple times since March, she finally let it expire. Access to Public Records Act gives public bodies ten business days to respond to a request for records, and an additional 20 business days if it would constitute an “undue burden” to reply in the initial timeframe. The EO in question, issued in response to the pandemic, gave all state and municipal agencies 20 additional business days to respond, meaning that records could be withheld for almost two-and-a-half months. A letter sent by the seven groups to the Governor pointed out that government transparency and the public’s right to know were more, not less, critical during emergencies. The governor allowed all provisions of the EO to expire save for one that granted the Department of Health an extra 20-business-day extension.

Crush COVID, not Privacy. Privacy Questions Raised Over RI's "Crush COVID RI" Contact Tracing App

In response to the Governor's release of the "Crush COVID RI" app, the ACLU raised a number of privacy concerns related to its location tracking program, designed to help with contact tracing, including:

- A lack of guarantees that DOH will not end up sharing information it collects with law enforcement officials and others, even if for purported public health purposes, just as the Department has done with addresses in its database of COVID-19-positive individuals.
- A failure to explain how people will be informed about future updates to the app so that they can choose whether to uninstall or otherwise stop using it if the features change.



The ACLU asked that the next version of the app address these concerns. On the positive side, the ACLU applauded the app's design that allows residents to access numerous health resources without sharing their location data, requires a series of affirmative steps to trigger the tracking location function, and provides for the automatic deletion of shared location data after 20 days.

DOH Revises COVID Screening Tool in Response to ACLU Concerns

Responding to ACLU objections of discrimination, the state has revised a COVID-19 symptom screening tool promulgated as part of the plan to gradually reopen the State for business. Under the Screening Tool, restaurants and most other establishments were required to "screen employees, clients, and/or visitors for symptoms of COVID-19" by eliciting a "yes" or "no" response to a series of questions about "symptoms," which included "cough," "shortness of breath or difficulty breathing," "muscle or body aches," "headache," "runny nose or stuffy nose," among others. The Screening Tool provided that, if the individual answered "yes" to any of the questions, they would "be asked to leave the building."

In a letter to state officials, ACLU cooperating attorney Lynette Labinger argued that the tool's standards were "arbitrary and discriminate against individuals with disabilities." She cited a host of non-COVID-related medical conditions that would disqualify a person from entering public accommodations using the Screening Tool.

In response, state officials agreed to revise the tool to make its use discretionary, and also amended the tool's language to ask only about symptoms that are not "explained by allergies or a non-infectious cause."

ACLU OF RI OFFICE REMAINS CLOSED (BUT OUR WORK GOES ON!)

Our office has been closed since mid-March and will remain so until it is safe to reopen. But because of your support, our work continues unhindered (from the safety of our remote work locations).

As always, if you have questions about our work or the issues, you can contact us at info@riaclu.org, and we are also checking our office voicemail and our postal mail!

PLEASE STAY SAFE!



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